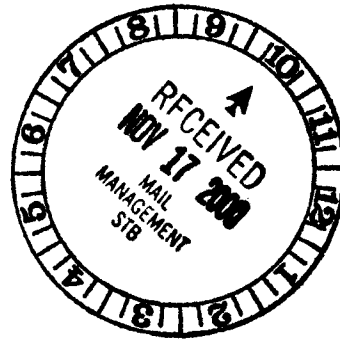


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BEFORE THE  
SURFACE TRANSPORTATION BOARD



ENTERED  
Office of the Secretary  
NOV 17 2000  
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Public Record

STB EX PARTE No. 582 (Sub-No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

COMMENTS OF THE PORT OF PORTLAND, OREGON  
ON THE NOTICE OF PROPOSED RULEMAKING

By notice served October 3, 2000, the Surface Transportation Board ("STB" or "Board") seeks comments on its proposed rulemaking significantly modifying the current regulations governing major rail consolidations. The Port of Portland, Oregon (hereinafter the "Port" or "Port of Portland") hereby files comments in response to the STB's request, and in support of the proposed modifications, as indicated below.

At the outset, the Port would like it understood that it is not opposed to all mergers and does not believe that there should be a presumption that all proposed mergers will be detrimental. If the applicants are able to satisfy the criteria set forth in the STB rules as now proposed, a merger should be approved as in the public interest.

Second, while the Port of Portland believes that all of the regulatory changes proposed will be helpful in assessing fully major rail merger applications, those changes pertaining to port participation are especially important to become final rules. Under the proposed rules, the STB recognizes that the rail industry

is part of a broader transportation infrastructure that also embraces the nation's highways, waterways, ports, and airports

and that any proposed merger must

enhance the capabilities and the competitiveness of this transportation infrastructure<sup>1</sup>

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<sup>1</sup> Proposed § 1180.1(a).

Further, in proposed §1180.1(c)(2), the Board indicates that it is determined to avert any harm to these essential components of the infrastructure, stating

The Board will consider whether projected shifts in traffic patterns could undermine the ability of the various network links (including Class II and Class III rail carriers and ports) to sustain essential services.

By these statements, for the first time, the STB has properly included the interests of the ports in the specific issues the Board must consider in evaluating whether a particular merger or consolidation meets the public interest standard in rail consolidation procedures. In doing so, the STB has embarked on a clear and necessary mission to protect the entire transportation infrastructure system for the long and short term benefit of the marketplace, rail carriers, shippers and general public.

Adoption of standards that require consideration of the impact of a merger on ports will allow the ports with greater confidence to go ahead with long-lead time projects to renew their own infrastructures to provide shippers with better service. The STB and all interested parties will have available and be able to determine, based on the applications, the routing, service, rates and any promotional preferences that the railroads intend to provide each port. This will allow the merger parties, the public, the ports and the STB the ability to evaluate and consider whether those factors will enhance "the competitiveness of this transportation infrastructure" or undermine the ability of ports, now considered "vital links in the transportation system"<sup>2</sup>, to sustain, enhance, and grow essential services and infrastructure. On this basis, there would be some assurance that the Board will receive totally developed facts on the impact on ports, and be able to make a fully-informed decision as to the public and private benefits of a proposed consolidation without a long and protracted procedure.

No less important is the STB proposal to require the creation of a "Service Council" for the five year oversight period, that, for the first time, would include not only shippers

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<sup>2</sup> Proposed Rulemaking at page 15.

but "railroads, and other interested parties".<sup>3</sup> In past merger oversight periods, ports have been excluded from participation in the regular meetings that the rail merger parties held with shippers. The Board's inclusion of ports in the Service Council will go a long way to provide ports up-to-date information and potential resolution of problems that, in turn, will allow the ports to continue effectively to serve domestic and international customers and to have the opportunity to protect the huge public and private investment they have made in port facilities during the implementation phase of a consolidation.

For the reasons stated above, the Port of Portland respectfully requests that the Board adopt the rules as proposed, with special consideration given to:

1. avoiding the presumption that all proposed mergers cause harm;
2. avoiding prolonged and lingering procedures; and
3. including the views of and impact on ports in STB decisions that are responsive to market needs and market dynamics.

Thank you for your consideration of these comments.

Respectfully submitted,

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November 17, 2000

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<sup>3</sup> Proposed Rule §1180.1(h).

Certificate of Service

I hereby certify that I have this 17<sup>th</sup> day of November, 2000, served a copy of the foregoing on all parties of record, either by hand or by first-class mail, postage prepaid.

Paul D. Coleman  
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